

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

In the Matter of Barbara Hamlin,

Complainant,

v.

Super 8 Motel of Fosston, Inc.,

Respondent.

**ORDER AWARDING
LITIGATION COSTS
AND ATTORNEY'S FEES**

The above-entitled matter is before Administrative Law Judge George A. Beck for consideration of the award of litigation costs and attorney's fees.

On January 26, 1999, Administrative Law Judge Allen E. Giles issued Findings of Fact, Conclusions of Law and Order in the above matter finding in favor of the Complainant and ordering the Respondent to reimburse the Department of Human Rights its litigation and hearing costs pursuant to Minn. Stat. § 363.071, subd. 7. The Order also required the Complainant to file a petition for reimbursement of attorney's fees incurred and directed the Respondent to file its response to the petition. Judge Giles' Order specifically provided that it was not the final decision in this proceeding and that the final decision would be contained in this Order.

The Complainant filed a Petition for Attorney's Fees on February 18, 1999. The Respondent filed its reply on May 12, 1999. The final written comments on litigation and hearing costs were filed on May 24, 1999.

The Complainant was represented by Clair E. Schaff, Esq., of the firm of Connor, Satre & Schaff, LLP, 580 Lumber Exchange Building, 10 South Fifth Street, Minneapolis, Minnesota 55402. The Respondent is represented by Richard C. Mollin, Esq., 114 North Johnson, Fosston, Minnesota 56542.

Based upon the memoranda filed by the parties, all of the filings in this case, and for the reasons set out in the accompanying Memorandum,

IT IS HEREBY ORDERED:

1. The Respondent shall pay to Barbara Hamlin and Clair E. Schaff jointly within 30 days of the date of this Order the amount of \$35,070.00 for reasonable attorney's fees and the amount of \$401.25 for costs in this matter.
2. This Order constitutes the final decision in this case and is effective immediately.

Dated this 26th day of May 1999.

GEORGE A. BECK
Administrative Law Judge

NOTICE

Under Minn. Stat. § 363.01, subd. 2, this Order, together with the partial Findings of Fact, Conclusions of Law and Order issued by Judge Giles on January 26, 1999, constitute the final decision in this case. Under Minn. Stat. § 363.072, any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

MEMORANDUM

Minn. Stat. § 363.071, subd. 1a, authorizes the Administrative Law Judge to award "reasonable attorney's fees". Minnesota courts have generally followed case law developed under Title VII of the Federal Civil Rights Act in interpreting the attorney fee provisions of the Minnesota Human Rights Act. For example, the Minnesota Supreme Court noted in *Anderson v. Hunter, Keith, Marshall & Company*,^[1]

Because Minn. Stat. § 363.14, subd. 3 (1986), allowing a successful plaintiff in a discrimination case such as this to recover attorney's fees is "virtually identical" to similar provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a-3(b), in reviewing attorney fee awards, we have followed federal law. See, e.g. *Sigurdson v. Isanti County*, 386 N.W.2d 715, 722 (Minn. 1986).

The leading federal case on awarding attorney's fees is *Hensley v. Eckerhart*.^[2] The 12 factors to be considered are set out in *Hensley* and are further discussed in *Johnson v. Georgia Highway Express, Inc.*^[3] Generally, *Hensley* requires the calculation of a "lodestar" figure by multiplying the hours reasonably expended on this case by the reasonable hourly rate. The factors set out in the federal case law, particularly the time and labor involved, the skill necessary to perform the legal services

properly, customary fee, the amount involved and the results obtained, and awards in similar cases, have been considered in arriving at appropriate attorney's fees in this case.

The Complainant seeks an award of \$39,094.36 of which \$861.86 are costs and \$38,232.50 are attorney's fees. Mr. Schaff has provided a detailed log of his billing records on this case which reflects total attorney hours of 186.25 and total legal assistant hours of 13.1. The attorney hours are proposed to be billed at \$200 per hour and the paralegal rate is \$75 per hour. \$200 per hour is Mr. Schaff's present billing rate. He asks that the fee award be based on this rate because the billing rate in effect at the time the attorney hours were expended, the historic rate, will not be fully compensatory due to the delay in payment.^[4]

The Respondent sought and was granted limited discovery concerning the facts set out in the petition and affidavit filed by Mr. Schaff. In the discovery, Mr. Schaff disclosed that his standard hourly rate on employment contingency cases changed from \$150 per hour to \$200 per hour on June 1, 1998. Mr. Schaff notes that 27.25 of the attorney hours billed were incurred prior to June 1, 1998, which would mean a reduction in attorney's fees of \$1,362.50 if those hours are billed at \$150 per hour. Mr. Schaff's firm has, on occasion, billed \$125 per hour subsequent to January 1, 1998; however, only approximately 5 percent of the firm's income was generated at that rate and this was in non-contingency cases, usually consultations. It is concluded that the firm's usual and customary fee is \$150 prior to June 1, 1998, and \$200 per hour thereafter. It is further concluded that these rates are consistent with those of employment law attorneys in the Twin Cities area for employment discrimination cases.

The Respondent raises three general objections to the attorney's fees claimed by the Complainant. First, it argues that the travel time billed by Mr. Schaff at \$200 per hour on five different days should not be compensated. It notes that Mr. Schaff is a Minneapolis attorney and his client and the venue of this proceeding were in Fosston, Minnesota, approximately 285 miles from Minneapolis. In discovery, the Complainant concedes that 20 hours were exclusively travel time. The courts have sometimes used lower rates to compensate attorneys for travel time.^[5] Since travel time does not involve skilled legal work and since complainant's counsel officed a good distance from his client, it is appropriate to reduce the billing rate for those 20 hours to \$100 per hour.

The Respondent also objects to nine hours of time devoted to drafting of the complaint in this matter and 12 hours to respond to the discovery requests. It believes that this billing should be reduced to two hours for attorney time and two hours for paralegal time. Discovery included both a demand for a production of documents as well as interrogatories. The hours billed do not appear to be unusual. The hours devoted to the drafting of the complaint, however, appears to be higher than required. The claim for nine hours of attorney time is appropriately reduced to five hours.

Third, the Respondent argues that attorney fees should be limited to the 40 percent contingent fee called for in the fee agreement between the Complainant and Mr.

Schaff. The fee agreement, signed in February of 1998, calls for a 40 percent contingent fee, but also indicates that the firm may seek hourly attorney fees from the defendant and indicates that the current fee rate for the law firm is \$150 per hour. The Respondent argues that even if an hourly rate is appropriate, it should be limited to \$150 per hour. The fee agreement is, of course, a contract between the Complainant and the law firm. On its face, it acknowledges the possibility of a statutory attorney fee to be awarded by the court. The contract does not limit an award under Minn. Stat. § 363.071, subd. 2, to a contingent fee or to the hourly rate set in the fee agreement. Rather, the case law indicates that a court should look to what is customary for an attorney's services in the community.^[6] Generally, the fee is set by considering the attorney's normal billing rate.^[7]

Considering the successful results obtained in this proceeding and the public policy to encourage victims of discrimination to bring actions where the relief sought is not a large money judgment^[8] it is concluded that it is appropriate to award attorney's fees at the rate of \$150 per hour prior to June 1, 1998, and \$200 per hour thereafter. Based upon the foregoing discussion, Complainant's counsel should be awarded 20 hours at \$100 per hour, 23.25 hours at \$150 per hour and 143 hours at \$200 per hour together with 13.1 legal assistant hours at \$75 per hour, or a total of \$35,070 for attorney's fees.

The Complainant also seeks costs of \$861.86 for postage, copying, depositions, court reporting, hearing tapes, and motel travel and food for four days and three nights during the depositions and trial. The Respondent argues that the only costs that should be allowed are deposition costs of \$331.25 and that costs for postage, copying, motel and travel are not permitted. Deposition expenses are clearly allowable as costs. The hearing tapes are in lieu of a trial transcript and are an allowable cost. No authority has been provided to support allowing photocopying and travel expenses as allowed costs rather than part of the attorney's overhead. Costs of \$401.25 are allowed.

Finally, Minn. Stat. § 363.071, subd. 7, requires that the Administrative Law Judge "order a respondent who is determined to have engaged in an unfair discriminatory practice to reimburse the department and the attorney general for all appropriate litigation and hearing costs expended in preparing for and conducting the hearing, unless payment of the costs would impose a financial hardship on the respondent." Since the Attorney General was not involved in this case, the hearing costs consist of the amount billed to the Department of Human Rights by the Office of Administrative Hearings for administrative law judge and staff attorney time. That amount is \$10,288.20 through April of 1999.

Judge Giles found as fact that the Respondent had gross sales of \$268,940 in 1997 and assets at the end of that year of \$620,103.00.^[9] The 1997 tax returns submitted by the Respondent show a total income of \$265,092.70 and a business loss of \$54,121.27 after deductions of \$319,213.97, including \$19,800 for compensation of officers, \$82,570.87 for salaries, and \$58,102.00 for depreciation. The Respondent acknowledges that about \$23,000.00 of the salary figure is available to the Saeters.

The Respondent argues that \$32,883.00 of income was available to the Saeters before taxes. The \$19,800.00 officer compensation plus the \$23,000.00 of salaries available would total \$42,800.00.

The total award in this case consists of \$23,240.00 in compensatory damages, a \$3,000.00 civil penalty payable to the state of Minnesota, \$1,500.00 in punitive damages, \$35,070.00 in attorney's fees and \$401.25 in costs or a total of \$63,211.25. Since the record indicates that the Respondent is a small business with a modest profit, it is concluded that a further award to the Department for hearing costs would impose a financial hardship on the Respondent.

G.A.B.

^[1] 417 N.W.2d 619, 628 (Minn. 1988).

^[2] 461 U.S. 424 (1983).

^[3] 488 F.2d 714, 717-19 (5th Cir. 1974).

^[4] Complainant relies on *Catlett v. Missouri Highway and Transportation*, 828 F.2d 1260, 1271 (8th Cir. 1987) as authority.

^[5] *Denny v. Westfield State College*, 50 FEP. 699 (D. Mass. 1988), affirmed 880 F.2d 1465, 50 FEP. 707 (1st Cir. 1989); *Stair v. Lehigh Valley Carpenters*, 66 FEP. 1502 (6th Cir. 1995).

^[6] *McDonald v. Johnson & Johnson*, 546 F.Supp. 324, 332 (D.C. Minn. 1982) (affirmed in part, reversed, vacated and remanded in part on other grounds), 722 F.2d 1390 (8th Cir. 1983).

^[7] *Shakopee Midewakanton Sioux Community v. City of Prior Lake*, 771 F.2d 1153 (8th Cir. 1985). cert. denied, 475 U.S. 1011 (1986).

^[8] *Sigurdson* at 722.

^[9] Findings of Fact No. 35.